IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.62 OF 2006

IN

CIVIL REVISION APPLICATION NO.106 OF 2004

Shri.D.M.Naik ...Applicant

Versus

Smt.K.N.Taskar ...Respondents

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Mr.Prasad Dani for Applicant.

Mr.S.M.Sakhardande for Respondents.

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CORAM: A.M.KHANWILKAR, J.

MAY 5, 2006.

P.C.

1. Heard Counsel for the parties. It is not in dispute that the decree passed by the Court below has already been executed against the Applicant. For the time being, I shall consider only prayer clauses (a) and (b) of this Application.

2. The issue as to whether possession of the

suit premises should be restored to the Applicant, will be considered at the hearing of the Revision Application, which I intend to restore by this order to the file to its original number, on condition to which I will make reference a little later.

3. The Revision Application was dismissed for default in view of the self operative conditional order passed by the Additional Registrar on 15th December 2002. The present Application has been filed on 4th May 2006.

4. In the first place, no fault can be found with the conditional order passed by the Additional Registrar. This is so because the Applicant failed to take steps and remove office objection within time. Eventually, conditional order came to be passed, which order is in accord with the provisions of the High Court (Appellate Side) Rules. Although the conditional order was passed in December 2004, present Application has been filed only in May 2006. The explanation offered is that the Applicant became aware about the

conditional order and dismissal of the Revision only when he has been dispossessed one week before filing of this Application in execution proceedings. Even if that stand is to be accepted as it is, the question is whether the Application should be allowed conditionally or unconditionally.

5. In my opinion, having considered the rival submissions, the Application is allowed in terms of prayer clauses (a) and (b), on condition that the Applicant shall deposit sum of Rs.13,00,000/- (Rupees Thirteen Lakhs) in this Court within eight weeks from today. This is so because the Respondent is senior citizen about 77 years of age as of now. Her husband is already 80 years of age. Respondent has succeeded before the lower Court as back as on 13th May 2004 in proceedings, which were instituted in 1996. The Respondent has been denied the fruits of the decree so far. It is only recently, the Respondent has been put in possession of the disputed property but the money decree still remains to be executed. Prima facie, there is substance in the stand taken by the Respondents that the attempt of the Applicant is only to

prolong the payment of the amount specified in the decree.

6. Accordingly, by way of indulgence to ascertain the bonafides of the Applicant, I am inclined to allow this Application in terms of prayer clauses (a) and (b), on condition that the Applicant shall deposit sum of Rs.13,00,000/- (Rupees Thirteen Lakhs) in this Court within eight weeks from today, failing which, the Office to proceed on assumption that this Application has been dismissed for non-prosecution.

7. If deposit is made in time, Revision will stand restored to the file to its original number, to be heard in the week commencing from 3rd July 2006 to be listed immediately after overnight part-heard.

8. As Respondent through Counsel assures that no third party right will be created in the suit premises, no further order is required.

A.M.KHANWILKAR, J.